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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/554,179

10/21/2005

Konstantinos Hatzilias

20159/SAW 100994

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34431

7590

08/22/2008

HANLEY, FLIGHT & ZIMMERMAN, LLC
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CHICAGO, IL 60606

EXAMINER

PATTERSON, MARIE D

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

08/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/554,179	Applicant(s) HATZILIAS, KONSTANTINOS	
	Examiner Marie Patterson	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 89-111 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 89-110 is/are rejected.
- 7) ☒ Claim(s) 111 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

1. Claims 104 and 106 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 104 and 106 claim all possible variations, i.e. at least at the base, near or at the top, or as an aperture" and therefore there are no further structural limitations recited in the claims rendering the claims confusing, indefinite, unclear, and vague as to what structural limitations applicant intends to encompass with such language.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 89-101, 108, and 109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (2003/0167658) in view of either Fellman (2383117) or Minges (6544626).

Davis shows a shoe with a plurality of resilient deformable protrusion (11a, 11b, 11c, etc.) made of rubber on an upper and describes/suggests alternative shapes;/patterns for the protrusions (paragraph [007])) including protrusions with grooves. Either Fellman or Minges teaches resilient deformable protrusions with inner and outer contoured shapes (grooves) as a shape/pattern for a resilient deformable protrusion which is usable in footwear for traction/friction. It would have been obvious to use the

Art Unit: 3728

shapes/patterns of frictional protrusions as taught by Fellman or Minges in the shoe of Davis for the deformable protrusion to provide a desired look/design for the shoe (as Davis suggests the use of different shapes for advertisement of a manufacturer (see paragraph [007])).

4. Claims 102-106 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 89-101, 108, and 109 above, and further in view of Adam (5901472).

Davis as modified above shows a shoe with a plurality of protrusions on an upper of footwear substantially as claimed except for the inner and outer contoured shapes having aligned openings therein. Adam teaches providing aligned openings in concentric shapes (figures 1 and 2A). It would have been obvious to provide openings as taught by Adam in the footwear of Davis as modified above to increase the flexibility of the protrusions, to change the look/design, to increase the ability to remove debris, etc.

5. Claims 107 and 110 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 89-101, 108, and 109 above, and further in view of either Oakley (1559450) or Packard (Des 68541).

Davis as modified above shows a shoe substantially as claimed except for the exact shape/configuration of the protrusions. Either Oakley or Packard teaches forming a traction/frictional protrusion with a central solid element and a peripheral element in which the two elements are of different heights. It would have been obvious to use the shape taught by either Oakley or Packard for the protrusion in the shoe of Davis as

Art Unit: 3728

modified above to provide staged impact, a different look, a more solid center contact element, etc..

Allowable Subject Matter

6. Claim 111 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments filed 7/16/08 have been fully considered but they are not persuasive.

In response to applicants' arguments that Fellman and Minges are not located on the upper of the shoe, these references do teach shapes for providing traction/friction/grip. Davis clearly teaches and shows a shoe with traction/friction/grip elements on an upper and also clearly suggests the use of different shapes for those elements (see paragraph 007). One of ordinary skill in the art would obviously look to other traction/friction/grip shapes used in footwear for a shape usable in Davis. It would have been obvious to use any traction/gripping/friction surface known for footwear for the gripping/traction/friction surface of Davis.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571)273-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.

/Marie Patterson/
Primary Examiner
Art Unit 3728